

CALIFORNIA ENERGY COMMISSION

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May 11, 2005

Laura I. Genao
Southern California Edison Company
2244 Walnut Grove Ave.
Rosemead, CA 91770

**Re: Energy Commission Order Denying SCE's Appeal of Executive Director
Determinations Denying Confidentiality – Electricity Demand Data;
Docket: No. 04-IEP-01-D**

Dear Ms. Genao:

Attached is a copy of the Energy Commission's Order denying Southern California Edison Company's appeal of the Executive Director's decision denying confidentiality for demand information Strategic submitted on February 1, 2005. Although the Order is dated April 13, 2005 -- the day of the Business Meeting at which the Energy Commission heard and decided the appeal -- I want to assure you that because the Order was not docketed until today, the Energy Commission will protect the disputed information from release for fourteen days from today. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Caryn J. Holmes
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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:)	Docket: 04-IEP-1D
)	Order No: 05-0413-15
Preparation of the 2005)	
Integrated Energy Policy Report)	Date: April 13, 2005
)	

Order Denying Southern California Edison Company's Appeal of Executive Director Decision Denying Confidentiality

SUMMARY

On November 3, 2004, the California Energy Commission (Commission) adopted Forms and Instructions identifying demand forecast data that certain load-serving entities (LSEs) must provide, in order for the Commission to meet its statutory mandate to prepare the 2005 Integrated Energy Policy Report (2005 IEPR). (Pub. Resources Code, § 25302.) The data was due on February 1, 2005. On February 3, 2005, Southern California Edison Company (SCE) filed the data, and included an application for confidential designation of Forms 1.2, 1.3, 1.4, 1.5, and 1.6.¹ The period of confidentiality requested by SCE was 15 years for Forms 1.2, 1.3, 1.4, and 1.6; for Form 1.5, SCE requested an indefinite term of confidentiality. Pursuant to the Commission's regulations (Cal. Code Regs., tit. 20, § 2505), the application was reviewed by the Executive Director, who granted it in part and denied it in part on March 3, 2005. On March 17, 2005, SCE filed an appeal of the Executive Director's decision denying SCE's confidentiality request for Forms 1.3, 1.4, 1.5, and limiting confidentiality to a 3-year period for that information for which confidentiality was granted. The Commission heard the appeal at its April 13, 2005 Business Meeting. Based on SCE's application and appeal, the Executive Director's determination, and the information provided at the Business Meeting, the Commission hereby denies SCE's appeal.

LEGAL FRAMEWORK

Public Resources Code sections 25301 and 25302 direct the Commission to assess all aspects of energy supply, production, transportation, delivery and distribution, demand, and prices, and to develop policies that conserve resources, protect the environment, ensure reliability, enhance the economy, and protect public health and safety. In order to carry out the assessments identified in Public Resources Code sections 25301 and 25302, Public Resources Code section 25301 authorizes the Commission to "require submission of demand forecasts, resource plans, market assessments, and related outlooks from electric . . . utilities . . .". Title 20, California Code of Regulations, section 1345, specifies that each electric utility shall provide a demand forecast "according to forms and instructions adopted by the Commission."

¹ A description of each of the Forms and a glossary of energy terms is included as Appendix A to this Order.

The Public Records Act (Gov. Code, § 6250 et seq.) states that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code, § 6250.) The Act establishes a general principle that every person has the right to inspect any “public record,” subject to various exceptions. (Gov. Code, § 6253.) Public records are broadly defined, and include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Gov. Code, § 6252.) In addition, as of last year, the state Constitution now directs that statutes and regulations shall be broadly construed if they further the people’s right of access, and narrowly construed if they limit the right of access. (Cal. Const., art. I, § 3, subd. (b)(2).)

One of the exceptions to the Public Records Act’s general rule of disclosure is for “trade secrets.” Government Code section 6254 (k) allows agencies to withhold “records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” One such “federal or state law” is the Uniform Trade Secrets Act (Civ. Code, § 3526 et seq.), a California law that prohibits the release of trade secret information and provides for injunctive relief and damages as remedies. Another is California Evidence Code section 1060, which states that “the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” A “trade secret” is:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1, subd. (d).) In addition, agencies may withhold records not exempt from disclosure under a specific Public Records Act exemption when the agency finds, on the facts of the particular case, that the public interest served by not disclosing the record “clearly outweighs” the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)²

Title 20, California Code of Regulations, section 2505 allows private parties submitting information to the Commission to file an application for confidential designation of that information. If the basis of the claim for confidentiality is that the information contains trade secrets or would otherwise cause loss of a competitive advantage, the application must state the specific nature of that advantage and how it would be lost, including the value of the information to the applicant and the ease or difficulty with which the information could be legitimately

² Both the “trade secrets” exemption and the “balancing test” are also reflected in Public Resources Code, section 25322, which is part of the Warren-Alquist Act, which created the Commission. (Pub. Resources Code, § 25000 et seq.)

acquired or duplicated by others. Section 2505 requires the Executive Director, in consultation with the Chief Counsel, to issue a decision on the application within 30 days, and to grant the application if the applicant makes “a reasonable claim” that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential. Appeals of Executive Director decisions denying confidentiality must be filed within fourteen days of the Executive Director’s decision, and the Commission must decide an appeal within four weeks of its filing. (Cal. Code Regs., tit. 20, § 2505, subd. (a)(3)(B).)

PROCEDURAL HISTORY

On February 3, 2005 SCE provided the electricity demand forecast information identified in the Commission’s November 3, 2004 Order, along with an application for confidential designation of “Distribution System Energy Requirements at Generation” on Form 1.2, “Bundled Customer Peak at Generation” on Form 1.3³, “Bundled Customer Peak at Generation”, “Coincident Direct Access at Generation” and “Distribution Service Area Peak Demand at Generation” on Form 1.4⁴, “Peak Demand Weather Scenario” data on Form 1.5, and all LSE hourly load information on Form 1.6. SCE asked that the term of confidentiality for each item be fifteen years, except for Form 1.5, for which it requested an indefinite period of confidentiality.

SCE’s application stated that the data on these forms are commercially sensitive and entitled to the “trade secret” exemption from disclosure under the Public Records Act. Specifically, SCE asserted that the information would allow market participants to calculate SCE’s “residual net short” position (i.e., the amount of demand SCE needs to meet, minus supplies available to meet that demand), either on an annual or hourly basis. According to SCE, this would allow sellers to charge more for power, or allow buyers of SCE’s surplus power to obtain the power at a lower price than would be the case without the information, thereby harming SCE’s customers. SCE stated that the “residual net short” information can be derived, in part, because of the public nature of data on so-called “must-take” contracts and on utility-owned generation, which provide information about how SCE meets some of its load requirements. Finally, SCE claimed that the peak information could not be easily duplicated or acquired by others.

On March 3, 2005, the Executive Director granted a three-year term of confidentiality for Form 1.5 demand forecast data setting forth “1-in-5”, “1-in-10”, and “1-in-20” temperature scenarios (i.e., those that can be expected to occur once every 5 years, every 10 years, and every 20 years, respectively). The Executive Director also granted confidentiality for the hourly load forecast contained on Form 1.6, finding that the information could be used to calculate *hourly* “residual net short” forecasts, which would, by giving information about how much power SCE needs at particular times during the year, give SCE’s sellers and buyers a negotiating advantage. However the Executive Director concluded that the remaining data on Form 1.5 and the data on Forms 1.2, 1.3, and 1.4 are not entitled to confidential treatment because the *annual* net peak demand numbers on those Forms are insufficient to arrive at *hourly* “residual net short”

³ There is no such column on Form 1.3. From subsequent conversations with SCE, it is apparent that SCE is referring to the total peak column.

⁴ “Bundled Customer Peak” is the title of a column on Form 1.4, but “Coincident Direct Access at Generation” and “Distribution Service Area Peak Demand at Generation” are not. The Commission treated SCE’s request for confidentiality as applying to the entire form.

forecasts.⁵ This decision explicitly rejected the SCE assertion that the annual data could be used to “reverse engineer” the hourly “residual net short” descriptor of SCE’s needs that SCE says it wishes to protect in its confidentiality request.

On March 17, 2005, SCE appealed the Executive Director’s decision with respect to “Bundled Customer Peak at Generation” on Form 1.3, “Coincident Direct Access at ISO” and “Distribution Service Area Peak Demand at Generation” on Form 1.4, “1-in-2” response to temperature data on Form 1.5, and limiting the term of confidentiality for non-public information to 3 years. SCE stated that disclosure of “Bundled Customer Peak at ISO” data, in conjunction with other public data, will allow other market participants to determine how much additional power SCE needs to procure on an hourly or annual basis, negatively affecting SCE’s customers. SCE asserted that “Coincident Direct Access at ISO” and “Distribution Service Area Peak Demand at Generation” are also entitled to confidential designation because they contain “Bundled Customer Peak at ISO”, which it claims is entitled to confidential designation, as discussed previously. SCE also claimed protection for “1-in-2” temperature data because it too can be used to calculate “Bundled Customer Peak at ISO”. Finally, SCE stated that because the information for which confidentiality was granted is stable, three years is an insufficient period of time to protect the data. SCE said that release of this data after three years would allow market participants to have superior bargaining positions precisely when SCE is in the greatest need of resources – during periods of extreme weather conditions.

On April 13, 2005, the Commission conducted a hearing on SCE’s appeal. At the hearing, the SCE attorney, speaking on behalf of the three investor-owned utilities (IOUs) that filed confidentiality appeals -- SCE, San Diego Gas and Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) -- clarified that *the sole issue on appeal was the confidentiality of bundled customer annual peak data.* (4/13/05, Reporter’s Transcript (RT), p. 69.) She stated that ratepayers would be disadvantaged if market participants could learn what SCE needs for its customers on an annual basis. (*Ibid.*) SCE also pointed out that in his March 30, 2005 determination on the confidentiality of supply-side information, the Executive Director had decided to protect peak data; SCE argues that the Commission’s decision on this issue should be consistent with that determination. (*Id.* at 82.) However, Commission staff pointed out that the two peak numbers are at different levels of disaggregation, with the annual demand peak determination under appeal being at a greater level of aggregation than the monthly supply peaks that were subsequently protected by the Executive Director. (*Id.* at 83.)

Commission staff also pointed out that the question is not whether disclosure of this information would allow other market participants to use other publicly-available data to calculate the gap between supply and demand at one (unspecified) point in the year -- noting that there is some publicly-available data on *both* supply and demand in other forums. (4/13/05, RT, p. 77.) Rather, the question is whether the information can be used to calculate specific hourly “residual net short”, and thereby identify the types of resources the IOUs need. (*Ibid.*) Staff analyst Dr. Michael Jaske stated that he “was not convinced in all the discussions I’ve had with the utilities that knowing the supply/demand gap for a single peak hour . . . allows generators . . . to know

⁵ While the Executive Director’s determination stated that information about hourly loads could provide a competitive advantage to bidders, the Commission itself has not addressed this issue. In any event, the question before us is whether the annual peak demand numbers can be used to derive hourly “residual net short” and IOU resource needs, not whether hourly “residual net short” is entitled to confidential designation.

what magnitude of resources they're going to acquire, when they're going to acquire them, the kind of resources they're going to acquire." (*Ibid.*) Dr. Jaske also pointed out that utilities have options for meeting peak demand in addition to purchases from third parties. (*Id.* at 78.) SCE then referenced an academic study on the effect of information disclosure on prices, claiming that the paper indicates that prices increase when demand information is released. (*Id.* at 97.) Commissioner Geesman commented that his review of the study in light of his extensive knowledge of the market for electric power led him to believe the study was not a credible replication of the market. (*Id.* at 99.) (Commissioner Geesman has served as Chairman of the Board of Governors of the California Power Exchange, and as a member of the Board of Governors of the Independent System Operator.)

DISCUSSION

We begin our discussion by noting that the Public Records Act was intended to safeguard the accountability of government to the public. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771-772 [192 Cal.Rptr. 415].) Because it serves this important public interest by securing public access to government records, it is construed broadly in favor of access, and exemptions from disclosure are construed narrowly. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476 [23 Cal.Rptr.2d 412].) The Commission is using the data that is the subject of this appeal to set important state energy policy, including both how much (and what kind of) electrical generation and transmission is necessary for the state's future. We believe there is a strong public interest in having the information underlying such policy decision-making accessible to the public and interested parties, rather than using a "black box" process not subject to public discussion or critique. This makes it all the more important that the Commission critically assess the general claim that information used in this process is a "trade secret" that derives economic value from not being made public. As can be seen in the discussion below, we have decided that the peak demand data at issue in this appeal has no such value and, moreover, that its confidentiality would prevent interested persons from effectively participating in the Commission's public process.

Annual Peak Data – Forms 1.3 and 1.4

Annual peak data identified on Forms 1.3 and 1.4 consist of the amount of demand in the hour of the year with the highest demand. (Electricity Demand Forecast Forms.) Thus, the data for which confidentiality is sought is a single number, and has no particular time or date associated with it. SCE claims that disclosure of this data, in conjunction with publicly-available *supply* data, could allow market participants to derive the amount of electricity SCE will need to buy, thereby impairing its bargaining position.

Resolving this issue involves answering two questions. The first question is whether disclosure of the annual peak data on Forms 1.3 and 1.4 would allow other market participants to derive the amount of electricity SCE will need to purchase. There appears to be no dispute that other market participants will be able to derive *some* estimate of how much total electricity is needed at the (unspecified) hour of annual peak using this data. However, that answer does not justify confidentiality. The second, and more important, question is whether knowledge of the extent of the gap between supply and demand during the single hour of highest demand -- without knowing when that hour will occur -- affects the bargaining power of SCE vis-à-vis its potential suppliers and purchasers. The answer is no, for several reasons. First, data similar to that on

Forms 1.3 and 1.4 is already publicly available, so the disclosure of Forms 1.3 and 1.4 would have a minimal effect at most. Second, the lack of specificity about *when* the hour of highest demand will occur and the lack of information about the similarity to or difference between that hour and any other hour during the year substantially diminishes the value of the information. In this regard, particularly telling was SCE's failure to demonstrate, in response to the Commission staff's request, how disclosure of the contested annual peak demand data would allow a potential negotiator to calculate hourly "residual net short." Third, and most significant, is the fact that potential sellers market a variety of products to SCE that vary by price, by location of electricity delivery, by the duration of the contract, and by the amount and type of electricity purchased. In addition, IOUs have options for meeting peak demand in addition to purchases from third parties. (*Id.* at 78.) Therefore, knowing a little more about the level of peak demand in one unspecified hour is very unlikely to have a material effect on the prices bid for such complex contracts. Moreover, the academic study on the effect of disclosure of demand information on prices referenced by SCE was of limited, if any, relevance, because there was no discussion of the variables in the study and their relationship to the specific question of releasing annual peak data. Finally, we are mindful that the California Constitution requires us to narrowly construe our regulations if they limit public access to information. (Cal. Const., art I, § 3, subd. (b)(2).)

In light of these factors, we simply are not convinced that disclosure of the information on Forms 1.3 and 1.4 would cause a significant shift in bargaining power between SCE and other market participants. As a result, there is thus no "economic value" that SCE obtains from nondisclosure and the data does not constitute a trade secret. In light of that fact, SCE has also failed to demonstrate that the public interest served by not disclosing the record "clearly outweighs" the public interest served by disclosure of the record.

"1-in-2" Response to Temperature Data – Form 1.5

The "1-in-2" response temperature data indicates the peak demand forecast under warm weather to be expected 50 percent of the time. (*General Instructions For Demand Forecast Submittals*, p. 7.) A peak demand to be expected 50% of the time represents an average peak demand and is thus expected to be the same as the annual peak demand identified on Forms 1.3 and 1.4. Therefore, the Commission believes the same discussion provided above for annual peak data is equally applicable to the "1-in-2" temperature data on Form 1.5. In addition, we note that the Commission collected and made available this type of data from the utilities in the past, and we believe that the range of sensitivity to average weather under summer peak conditions is well understood by market participants. As such, its disclosure will not affect the bargaining position of SCE and potential sellers.

Term of Confidentiality - Forms 1.5, and 1.6

SCE also appealed the Executive Director's designation of a three-year term for confidentiality of the data he determined should be kept confidential. SCE stated that because the information is stable, three years is an insufficient period of time, and that release of this data after three years would allow market participants to have superior bargaining positions precisely when SCE is in the greatest need of resources -- during periods of extreme weather conditions. We believe that the term of confidentiality for data deemed confidential should be based on the length of time that the data could reasonably be expected to create economic benefit for SCE if withheld, or to create an economic benefit for a competitor or economic harm to SCE if released. The data

requested by the Commission are estimates, and reflect many other assumptions. (*General Instructions For Demand Forecast Submittals*, p. 8.) In addition, all load forecasts submitted in 2005, and their assumptions, will be updated and re-submitted in 2007. (Pub. Resources Code, §§ 25302, 25320.) Therefore, the 2007 Energy Report demand forecast submissions will have been made before the expiration of the 3-year period of confidentiality granted by the Executive Director. Thus, there is no long-term economic value lasting beyond three years of any of the confidential data filed.

FINDINGS OF FACT

1. On February 3, 2005, SCE filed Electricity Demand Forecast Forms 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 with the Commission for use in the Commission's 2005 Integrated Energy Policy Report proceeding. SCE included an application for confidential designation for the entire contents of Forms 1.2, 1.3, 1.4, and 1.6 for a period of fifteen years, and of Form 1.5 for an indefinite period of time.
2. On March 3, 2005, the Commission's Executive Director determined that SCE, in its application for confidentiality, did not make a reasonable claim that the data on Forms 1.2, 1.3, 1.4, and data other than the hourly load forecast on Form 1.6 and the "1-in-5", "1-in-10", and "1-in-20" temperature data on Form 1.5 are trade secrets, specifically stating that the public data on Forms 1.2, 1.3, and 1.4 are insufficient to arrive at hourly net short forecasts.
3. On March 17, 2005, SCE filed an appeal of the Executive Director's denial of confidentiality with respect to "Bundled Customer Peak at Generation" on Form 1.3, "Coincident Direct Access at ISO" and "Distribution Service Area Peak Demand at Generation" on Form 1.4, "1-in-2" temperature data on Form 1.5, and limiting the term of confidentiality for non-public information to 3 years.
4. On April 13, 2005, the Commission held a hearing on SCE's appeal. Comments were provided by Commission staff, SCE, and other load-serving entities, including both other investor-owned utilities, and energy service providers.
5. The annual peak demand forecast data on Forms 1.3 and 1.4 identify only the amount of demand for the single hour of the year with the highest demand, and by themselves provide no information about *when* peak demand will occur, or the relationship of that hour to any other hour of high demand.
6. The "1-in-2" temperature data indicates the peak demand forecast under warm weather to be expected 50 percent of the time. This is expected to be the same as the publicly-available annual peak demand identified on Forms 1.3 and 1.4, as it represents an "average" peak demand. In addition, the Commission collected this type of data from the utilities in the past, and the range of sensitivity to average weather under summer peak conditions is well understood by market participants.
7. There is publicly available historical data – such as annual peak demand data published by SCE, historic hourly load data available from the Federal Energy Regulatory Commission (FERC), and annual peak demand forecasts posted on the California

Independent System Operator website -- that is similar enough to the data for which confidentiality is sought so that analysts familiar with the energy market could make close approximations to the data SCE seeks to have designated as confidential. Specifically, SCE itself makes public various peak load data in its transmission planning studies.⁶ FERC publishes data on annual hourly loads submitted to it as part of FERC Form 714.⁷ The California Independent System Operator publishes peak load data as part of its annual grid planning studies as well as assessments for specific transmission projects.⁸

8. The amount of electricity SCE needs to buy for any particular hour is related to the difference between the amount of demand at that hour and the amount of all other energy that SCE can deliver to its customers (which can be obtained from its own generation resources, from contracts whose terms are confidential, and from contracts whose terms are publicly available). In addition, SCE can utilize demand response programs to reduce demand at peak. Therefore, significant additional information is needed in addition to peak electricity demand to ascertain SCE's energy needs for the hour of the year with highest demand. Similarly, even if energy needs for that hour could be ascertained, additional information would be needed to determine energy needs for other hours of the year.
9. Sellers market a variety of short-term and long-term resources electricity products to SCE that also vary by the location of where the electricity is delivered and the type of energy provided. The sale of these products does not depend solely on the single hour of the year with the highest demand. Even if the data for which SCE seeks confidentiality, in conjunction with publicly-available supply information, were to allow identification of when the hour of the year with the highest demand will occur, sellers would not be able to use this information to charge higher prices for their products (or buyers to offer lower prices), because of the numerous other factors that affect electricity sales contracts. Therefore, disclosure of annual electricity peak demand data does not provide economic value to entities buying energy from or selling energy to SCE.
10. Just as identification of the level of demand for the (unspecified) hour of year with highest demand does not allow others to identify the hour of the year with the highest demand, this information does not allow others to identify when any other hours of high demand will occur.
11. The term of confidentiality for data deemed confidential is directly based on the length of time that the data could reasonably be expected to create economic benefit for SCE if withheld, or to create an economic benefit for a competitor or economic harm to SCE if released. The data requested by the Commission are estimates, and reflect many assumptions. All load forecasts submitted in 2005, and their assumptions, will be

⁶ SCE itself publishes peak demand data for its customers through press releases, such as the "Highest Power Demand - August 2004" found at: http://www.edison.com/files/sce_mediakit_major_system_events.pdf

⁷ Published annually on the FERC website: Example for calendar 2003 within the WECC file is shown at <http://www.ferc.gov/docs-filing/eforms/form-714/data.asp>

⁸ Published on the CAISO website as part of the Devers-Palo Verde Transmission Expansion Assessment Project. Table C3 shows IOU planning area peak demand: <http://www1.caiso.com/docs/2005/02/03/200502031659448693.pdf>

updated and re-submitted in 2007. (Pub. Resources Code, §§ 25302, 25320.) The 2007 Energy Report demand forecast submissions will have been made before the expiration of the 3-year period of confidentiality granted by this Order, eliminating the economic value, and thus the trade secret status, of any of the confidential data.

CONCLUSIONS OF LAW

1. The Public Records Act was intended to safeguard the accountability of government to the public and should be construed broadly in favor of access. In addition, there is a strong public interest in having the information underlying such policy decision-making accessible to the public and interested parties, rather than using a "black box" process not subject to public discussion or critique. Thus, the Commission must critically assess the general claim that information used in this process is a "trade secret" that derives economic value from not being made public.
2. Forms 1.2, 1.3, 1.4, 1.5, and 1.6 submitted by SCE on February 2, 2005 in response to the Commission's November 3, 2004 Order Adopting Demand Forecast and Price Information Forms and Instructions are public records.
3. The Commission may withhold the records from disclosure if it finds that the records derive independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from their disclosure or use, and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy, or if the Commission finds on the facts of the particular case that the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records (including finding that the competitive advantage accruing to the SCE from non-disclosure outweighs the public interest in a transparent energy policy development process).
4. Because annual peak demand forecast data on Forms 1.3 and 1.4, and the data on "1-in-2" temperatures on Form 1.5 are single annual numbers whose disclosure does not allow anyone to calculate when the hour of highest demand will occur, nor what SCE's actual energy needs during that hour or any other hours will be, and because the value to SCE of electricity products does not depend solely on the supply-demand gap during the single hour of the year with the highest demand, SCE has not made a reasonable argument that these data are a trade secret, or that the public interest in non-disclosure is clearly outweighed by the public interest in disclosure.
5. Because the data requested by the Commission are estimates, and reflect many other assumptions that will be replaced every two years, their long-term usefulness in creating economic gain or a marketing advantage is limited. Under these circumstances, a three-year period of confidentiality is reasonable for that data deemed eligible for confidential protection.
6. This proceeding has been conducted in conformity with applicable provisions of the Commission's regulations governing disclosure of information, the requirements of the Integrated Energy Policy Report, and the provisions of the Public Records Act.

ORDER

Therefore, the Commission ORDERS the following:

1. The Commission upholds the Executive Director's decision dated March 3, 2005, regarding SCE's application for confidentiality.
2. The peak demand forecast data on Electricity Demand Forecast Forms 1.3 and 1.4, and the "1-in-2" column on Electricity Demand Forecast Form 1.5 filed by SCE on February 3, 2005, are public, but shall not be available for inspection or copying for a period of fourteen days from the issuance of this order. (Cal. Code Regs., tit. 20, § 2505, subd. (a)(3)(C).)
3. The "1-in-5", "1-in-10" and "1-in-20" temperature data on Form 1.5 and the hourly load forecast contained on Form 1.6 filed by SCE on February 3, 2005 shall remain confidential for a period of three years from the date of this order.

Date: April 13, 2005

STATE ENERGY RESOURCES
CONSERVATION AND
DEVELOPMENT COMMISSION

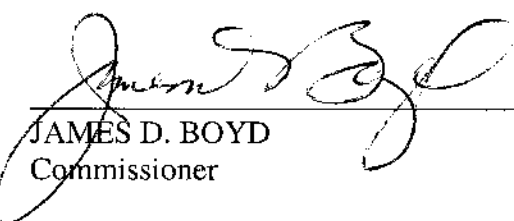
VACANT
Chairman



JACKALYNE PFANNENSTIEL
Vice Chair



ARTHUR H. ROSENFELD
Commissioner



JAMES D. BOYD
Commissioner



JOHN L. GEESMAN
Commissioner

Appendix A

DEFINITIONS

Load-serving Entities (LSEs)

These are entities that sell electrical energy at retail to customers within California. They include investor-owned utilities (further defined below), municipal utilities, energy service providers (further defined below), irrigation districts, rural electric cooperatives and a few other entities that serve a small number of retail customers. The following entities are identified in the Order to which this Appendix is attached:

Investor-owned utilities (IOUs) – San Diego Gas and Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company, who operate as monopolies regulated by the California Public Utilities Commission.

Energy Service Providers (ESPs) - private business entities that sell electricity in California subject to the provisions of Public Utilities Code, section 394 et seq.

Distribution Utilities

These are entities that own and operate the lower voltage wires and transmission equipment that carry electrical energy from substations to retail customers in a franchise service area. IOUs are distribution utilities.

Peak Load (Peak Demand)

This is the highest electrical demand that an LSE experiences within a specified period of time (usually annually). For the 2005 IEPR, the Commission asked LSEs to identify maximum electrical demand for the hour of the year with the highest level of demand. LSEs meet peak demand by a variety of means – demand reduction programs, powerplants owned by the LSE, and electricity purchased by the LSE, either on a long-term or short-term basis.

Residual Net Short

This is the additional electricity resources an LSE needs to acquire to meet its retail customer electrical energy demand for any particular period of time, minus supplies already acquired to meet that demand. Residual net short is often expressed as “hourly residual net short” for a specified hour.

SUMMARY OF ADOPTED FORMS

Form 1.1 – Retail Sales of Electricity by Class or Sector

This Form asks LSEs to identify how much electricity (in gigawatt hours [GWh]) they anticipate they will sell at retail on an annual basis in the each of the years 2006 – 2016, broken down by customer class (or sector). Customer classes (sectors) are typically defined by the economic

sector of the customer --residential, commercial, industrial, agricultural, and other small categories. In addition, ESPs are asked to break down their sales totals by service territory as well (e.g., PG&E, SDG&E, etc.), as they may sell into multiple service territories.

Form 1.2 – Net Electricity for Generation Load

This Form asks distribution utilities (including IOUs) to identify how much electricity they anticipate will be needed each year of the forecast to meet demand within their service territory – including sales to the IOU’s own customers as well as sales from other entities to non-IOU customers within the IOU service territory. The total amount of electricity needed to meet demand within a service territory includes electricity consumed by IOU customers (Form 1.1), electricity consumed by non-IOU customers, and the amount of energy lost in the transmission and distribution process.

Form 1.3 – LSE Coincident Peak Demand by Sector

This Form asks LSEs to identify hourly demand during the hour of the year with the highest total demand for all customer classes (or sectors) that they serve, by customer class (or sector). The total represents the highest amount of energy that the LSE will need to meet its customers’ needs during the single hour of the year with the highest demand plus the amount of energy lost in the transmission and distribution process.

Form 1.4 – Distribution Area Peak Demand

This Form asks distribution utilities (including IOUs) to forecast the peak demand for its service territory, which consists of the level of demand during the single hour of the year with the highest demand. However, unlike, Form 1.3, Form 1.4 asks the utility to include demand from all customers within its service territory, not just demand from its own customers.

Form 1.5 – Peak Weather Scenarios

This Form asks distribution utilities (including IOUs) to provide demand for the single hour of the year with the highest demand under 4 different temperature scenarios - those that can be expected to occur once in every two years, every 5 years, every 10 years, and every 20 years.

Form 1.6 – LSE Hourly Load

The Form asks LSEs to identify how much energy they will need to provide for their customers for each hour of the 16-year forecast period.

Form 1.7 – Local Private Supply by Sector

This Form asks distribution utilities (including IOUs) to forecast the amount of their customer demand that will be met by non-utility-owned generation, such as customer-owned generation located on the customer’s premises.

Form 2.1 – Economic and Demographic Inputs

This Form asks distribution utilities (including IOUs) to document the statewide and national economic and demographic projections used to develop their forecasts.

Form 2.2 – Planning Area Assumptions

This Form asks all LSEs to document the local economic and demographic projections used to develop their forecasts.

Form 2.3 – Electricity Rate Forecast and Natural Gas Price Forecast

This Form asks all LSEs to identify projected energy prices they used in developing their annual peak and energy forecast for each of the customer classes (or sectors).

Form 2.4 – Customer Count and Other Forecasting Inputs

This Form asks all LSEs to identify the number of customers by customer class (or sector).

Form 4 – Demand Forecast Methods and Models

This Form asks all LSEs to document the methods and models used to develop the forecasts identified on Forms 1.1 – 3.4.

Form 6 – Uncertainty Analysis

This Form asks all LSEs to identify which uncertainties it considers most relevant to its forecasts, as well as the impacts these uncertainties could have on its forecasts. LSEs are asked to quantify the impacts of the most significant uncertainties.